REMARKS/ARGUMENTS

Claims 2-6, 9, 11, 24-29, 32-33, 57, 59-60, 62-64, 70, 72-73, 75-78, and 81-87 are currently pending in this application.

Claims 2-6, 9, 11, 24-29, 32-33, 59-60, 62-64, 72-73, 75-78, and 81-86 are rejected under 35 U.S.C. 102(e) as being anticipated by Ellis et al. (U.S. Patent No. 7,171,174). Claims 57 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis and further in view of Blum. Claim 87 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis and further in view of Yoshinobu (U.S. Patent No. 5,734,444) and Sun (U.S. Patent No. 6,725,102). Applicant respectfully traverses these rejections.

The filing date of the present application is June 20, 2001. Accordingly, the disclosure in the Ellis patent qualifies as prior art only if it is entitled to the benefit of U.S. Provisional Application No. 60/270,463, filed February 20, 2001. Only those portions of the disclosure in the Ellis patent that find actual support in the provisional application would be entitled to the filing date of the provisional application and hence qualify as prior art.

Independent claim 64 recites "identifying first and second delivery times in which the first and second audio channels are configured to deliver the first and second audio pieces." The Examiner relies on FIG. 13, step 1354 of the Ellis patent which discloses that content may be recognized based on "schedule, signature, or broadcast information" to contend that Ellis satisfies this limitation. The Ellis provisional application, however, does not disclose that content may be recognized based on any type of "schedule." Accordingly, the Ellis patent is not prior art with respect to this limitation.

As the Ellis provisional does not disclose the claimed "first and second delivery times," it cannot disclose "automatically tuning to the first audio channel for receiving the selected first audio piece based on the identified first audio channel and the identified <u>first delivery time</u>." The same also applies for the "second delivery time."

Claim 64 further recites "temporarily storing in <u>a</u> buffer as the <u>customized audio program</u> the received first <u>and</u> second audio pieces." (Emphasis added). The Examiner relies on column 9, lines 29-32 of the Ellis patent to contend that this limitation is taught by Ellis. The portion of

the Ellis patent relied on by the Examiner disclose multiple buffers that store content for multiple radio stations. (See also, Ellis patent, FIG. 42, ref. 4208). Although the Ellis provisional application does not expressly disclose any buffers, it discloses that the system "may allow the user to record a portion of the radio input in the memory for later playback." (Ellis Provisional, p. 3, lines 18-19). Even if the Ellis provisional application were to support the disclosure of the multiple buffers described in the Ellis patent, neither the Ellis provisional nor the Ellis patent teach nor suggest a single buffer that stores "first and second audio pieces" delivered by different audio channels. Instead, in Ellis, the radio signal of each one of five favorite radio stations is separately recorded to allow a user to tune to the particular radio station of interest and rewind to the beginning of the song recorded for that radio station. (See, Ellis Provisional, p. 4, lines 17-19, 26-28). As such, Ellis's system does not create the claimed "customized audio program" from the "first and second audio pieces" received from "the first and second audio channels."

Claim 64 also recites "outputting the temporarily stored audio pieces responsive to a detected playback condition, which invokes playback of the customized audio program." The Examiner relies on FIG. 13, step 1362 to contend that Ellis discloses this limitation. Step 1362 indicates that a user may quickly switch to a content the radio station playing a content of interest by, for example, pressing a button. As explained in the Ellis provisional application, "when a favorite song or artist is played on a station other than the current station, the system may notify the user, who could tune to that station and rewind to the beginning of the song." (Ellis Provisional, p. 4, lines 26-28). However, as Ellis does not create the claimed "customized audio program," it cannot cause "playback of the customized audio program." Instead, in Ellis, if two songs that the user may be interested in are played on different radio stations, either manual or automatic switching to each of the radio stations would have to occur to hear both songs. This kind of switching, even if automatic, is not transparent to the user. Furthermore, switching in this manner without regard to their delivery times and without creating the claimed "customized audio program," does nothing to avoid switching to a station during the middle of a song. Although Ellis teaches that a user may rewind to the beginning of the song upon switching, this creates additional hassles for the user and does not provide the smooth and continuous playing of

music that would be possible via the claimed "customized audio program." Accordingly, claim 64 is in condition for allowance.
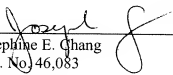
Independent claims 78 and 84 include limitations that are similar to the limitations of claim 64 which make claim 64 allowable. Accordingly, claims 78 and 84 are in condition for allowance.

Claims 2-6, 9, 11, 25-29, 32-33, 57, 59-60, 62-63, 70, 72-73, 75-77, and 81-83 are also in condition for allowance because they depend on an allowable base claim, and for the additional limitations that they contain.

Specifically with respect to claim 86, this claim recites that "the automatic tuning to the second audio channel does not interrupt the playback of the customized audio program." The Examiner contends that Ellis' disclosure of buffering reads on this limitation. However, even with Ellis' buffering, there is playback interruption whenever a switch is made from one radio station to another. That is, Ellis does not ensure uninterrupted playback of a "customized audio program" during the switching of one station to another. The buffering for a radio station allows music to be recorded for that station even if the user is not currently tuned to the station. Then, when the user does switch to the station, he or she may rewind to the beginning of a specific music. The rewinding to the beginning of the music also creates interruption of the current playback.

In view of the above amendments and remarks, reconsideration and an early indication of allowance of the now-pending claims 2-6, 9, 11, 24-29, 32-33, 57, 59-60, 62-64, 70, 72-73, 75-78, and 81-87 are respectfully requested.

Respectfully submitted,

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